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Attorneys for Defendant
AMCO INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE DOUGHERTY,

Plaintiff,

v.

AMCO INSURANCE COMPANY, and DOES
ONE through TWENTY, Inclusive,

Defendant.

) CASE NO. C 07-01140 MHP

) **REQUEST FOR JUDICIAL NOTICE IN**
) **SUPPORT OF MOTION OF DEFENDANT**
) **AMCO INSURANCE COMPANY FOR**
) **SUMMARY JUDGMENT, OR IN THE**
) **ALTERNATIVE, PARTIAL SUMMARY**
) **JUDGMENT**

) Date: July 30, 2007

) Time: 2:00 p.m.

) Dept.: 15 — Hon. Marilyn Hall Patel

Defendant AMCO Insurance Company ("AMCO"), by and through its attorneys, hereby
requests that the Court take judicial notice pursuant to Federal Rule of Evidence 201 of the
following:

1. That on January 24, 2007, Plaintiff Christine Dougherty filed the complaint in this
action in the Superior Court of the State of California, County of San Francisco, a true and correct
copy of which is attached hereto as **Exhibit U**. (The case was later removed to federal court.)

Dated: June 22, 2007

LEWIS BRISBOIS BISGAARD & SMITH LLP

By

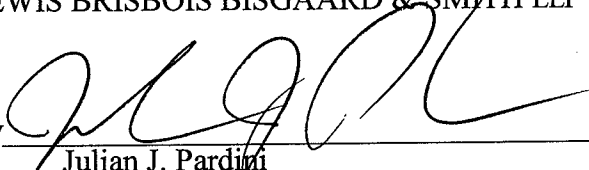

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EXHIBIT “U”

1 LAW OFFICES OF STEPHEN M. MURPHY
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**ENDORSED
FILED**
San Francisco County Superior Court

7 LAW OFFICES OF DAVID M. PORTER
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JAN 24 2007
GORDON PARK-LI, Clerk
BY: PARAMNATT
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

13 Attorneys for Plaintiff
14 Christine Dougherty

JUN 29 2007 -9⁰⁰ AM

DEPARTMENT 212

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 CHRISTINE DOUGHERTY,)
14)

NO. CGC-07-459877

15 Plaintiff,

COMPLAINT FOR DAMAGES
(Insurance Bad Faith)

16 v.)

17 AMCO INSURANCE COMPANY)
18 and DOES ONE through)
19 TWENTY, Inclusive,)

JURY TRIAL DEMANDED

20 Defendants.)
21)

22 Plaintiff CHRISTINE DOUGHERTY alleges:
23

24 1. Defendants DOES ONE through TWENTY are sued herein under
25 fictitious names; plaintiff does not at this time know the true names or
26 capacities of said defendants, but prays that the same may be inserted

1 herein when ascertained.

2 2. Plaintiff is informed and believes, and thereon alleges, that each of
3 the fictitiously-named defendants is responsible in some manner for the
4 occurrences herein alleged, and that plaintiff's damages as herein alleged
5 were proximately caused by their conduct.

6 3. Plaintiff is informed and believes and thereon alleges that at all
7 relevant times defendants AMCO INSURANCE COMPANY and DOES ONE
8 through TEN were corporations doing the business of insurance in California.

9 4. In or about October of 2000, defendants issued an automobile
10 insurance policy to plaintiff under her married name of Christine D.
11 Rayburn, Policy Number PPA 0008899321-1 (hereinafter, the "POLICY"). A
12 copy of said POLICY is attached hereto and incorporated herein as Exhibit 1.
13 Plaintiff was a named insured under the POLICY, which was in effect at all
14 relevant times, and in particular on April 17, 2001 when a vehicle driven by
15 an underinsured driver negligently collided with Plaintiff's vehicle, causing
16 her to suffer severe bodily injuries.

17 5. Under the terms of the POLICY, plaintiff was obligated to pay
18 premiums to keep the POLICY in effect. Under the terms of the POLICY,
19 defendants agreed to provide insurance coverage against all of plaintiff's
20 losses from covered occurrences, including Underinsured Motorist coverage
21 in amounts up to \$100,000 per person.

22 6. In the POLICY, and prior to its inception, defendants represented to
23 plaintiff that they would, in the event plaintiff suffered bodily injuries from a
24 covered accident with an uninsured driver, compensate plaintiff for such
25 injuries under the Underinsured Motorist coverage.

26 7. Throughout the period of POLICY and its renewals, plaintiff

1 promptly paid premiums and performed each act required on her part to
2 keep the POLICY in full force and effect. Plaintiff intended and expected
3 thereby to be assured of peace of mind and financial economic security in
4 the event of an automobile accident, and in particular, in the event of an
5 accident for which an underinsured or unknown driver was at fault.

6 8. On or about April 17, 2001, plaintiff was driving her vehicle on
7 San Marin Drive at the intersection of Simmons Lane in Novato, California
8 when her car was struck by an underinsured motorist.

9 9. Plaintiff was injured in the collision and has been treated for
10 various medical problems caused by to the incident.

11 10. Shortly after the accident, plaintiff reported the accident to the
12 defendants, and after settlement with the underinsured motorist, made a
13 claim under the Underinsured Motorist provision of the POLICY on or about
14 January 6, 2003. Defendants handled and made decisions on plaintiff's
15 claim beginning in January 2003 until the arbitration hearing over three
16 years later, on January 26, 2006.

17 11. The defendants acknowledged that plaintiff was injured in the
18 subject incident.

19 12. Despite the fact that liability under the Underinsured Motorist
20 coverage portion of the POLICY was clear, and despite the fact that
21 defendants acknowledged that plaintiff had been injured in the subject
22 accident, at no time before the arbitration hearing did defendants make a
23 payment to plaintiff under the Underinsured Motorist coverage portion of
24 the POLICY.

25 13. In response to defendants' request, in January 2003 plaintiff's
26 counsel provided defendants with copies of documentation regarding

1 plaintiff's underlying claim against the underinsured motorist. In October
2 2004, approximately three and one half years after the accident, plaintiff's
3 counsel demanded arbitration under the Underinsured Motorist coverage
4 portion of the POLICY, not having received any payment from defendants
5 under that coverage. Despite several settlement demands by plaintiff's
6 counsel, defendants refused to make any settlement offer and forced
7 plaintiff to arbitrate her underinsured motorist claim.

8 14. The arbitration took place on January 26, 2006 before the
9 Honorable Alfred Chiantelli (retired). On March 1, 2006, the arbitrator
10 issued a ruling awarding plaintiff damages in the amount of \$107,874,
11 including an offset of \$35,000 for the payment by the underinsured
12 motorist, leaving a net recovery to plaintiff of \$72,874. On November 8,
13 2006, the Superior Court of the State of California, County of San Francisco,
14 confirmed the arbitration award and on November 28, 2006 entered
15 judgment in favor of plaintiff and against defendant for \$72,874 together
16 with costs of suit. Defendant has satisfied the judgment except for payment
17 of the costs of suit.

18 15. By failing and refusing to pay benefits under these provisions of
19 POLICY as required and by forcing plaintiff to arbitrate her underinsured
20 motorist claim, defendants have acted in bad faith and breached their
21 contractual obligations to plaintiff.

22 **FIRST CAUSE OF ACTION**
23 (Breach of Contract)

24 16. Plaintiff realleges and incorporates by reference the allegations
25 of Paragraphs 1 through 15 above.

26 17. Plaintiff and defendants entered into a written contract of

1 insurance which provided underinsured motorist coverage. Plaintiff was
2 involved in an accident with an underinsured motorist.

3 18. Plaintiff made claims under her underinsured motorist coverage.
4 At all times, plaintiff met all of her obligations under the insurance contract.

5 19. Defendants breached the contract of insurance by the way in
6 which they handled, and mishandled, plaintiff's claims for underinsured
7 motorist benefits. They did not pay promptly and/or handle the claim fairly.

8 20. As a direct result of defendants' breaches of the insurance
9 contract, including the implied covenant of good faith and fair dealing,
10 plaintiff suffered damages including, but not limited to increased litigation
11 expenses, increased personal expenses, loss of interest, increased attorneys
12 fees, emotional distress, other financial losses, and other general and
13 special damages.

14 **SECOND CAUSE OF ACTION**
15 (Breach of Covenant of
16 Good Faith and Fair Dealing)

17 21. Plaintiff realleges and incorporates by reference the allegations
18 of Paragraphs 1 through 20 above.

19 22. At all relevant times, defendants agreed to act in good faith and
20 deal fairly with plaintiff when they entered into the POLICY and accepted
21 premiums from plaintiff. Defendants thereby assumed quasi-fiduciary
22 obligations to plaintiff and agreed to abide by such duties. Nevertheless,
23 defendants refused and failed to act in good faith and deal fairly with
24 plaintiff and breached said quasi-fiduciary obligations, as is set forth more
25 particularly herein.

26 23. In the absence of a reasonable basis for doing so, and with full
knowledge and/or reckless disregard of the consequences, defendants have

1 failed and refused to indemnify plaintiff under POLICY and the laws of
2 California, despite defendants' knowledge of facts mandating payment, until
3 plaintiff obtained an arbitration award.

4 24. Defendants engaged in a course of conduct to further their own
5 economic interests and in violation of their contractual and fiduciary
6 obligations to plaintiff including but not limited to:

- 7 a. misrepresentation of pertinent policy provisions and coverages
- 8 at issue;
- 9 b. unreasonable delays in acting upon plaintiff's claim;
- 10 c. unreasonable and improper investigation and/or handling of
- 11 plaintiff's claim;
- 12 d. denying coverage for certain losses when the facts and POLICY
- 13 provisions warranted payment;
- 14 e. In the above and other conduct, violation of the California
- 15 Insurance Code;
- 16 f. failing and refusing to make payment to plaintiff (or even an
- 17 offer) when liability under the policy was clear; and
- 18 g. other wrongful and illegal conduct.

19 25. On information and belief, this conduct was part of a larger
20 pattern of conduct involving the issuance of similar policies and/or claims of
21 other similarly situated insureds throughout California within the past
22 several years and up to the present. In pursuing this wrongful course of
23 conduct herein, defendants were pursuing unfair trade practices.

24 26. The above course of conduct was pursued without due regard
25 for and in reckless and conscious disregard of the medical, physical,
26 emotional and financial circumstances of and potentially adverse

1 consequences to plaintiff.

2 27. Defendants pursued this course of despicable conduct
3 intentionally, maliciously, in conscious disregard of the rights of plaintiff,
4 fraudulently, and/or with reckless disregard of the likelihood of causing
5 plaintiff extreme detriment to its business, and in furtherance of defendants'
6 own economic interests at the expense of plaintiff economic interests and
7 well-being.

8 28. As a proximate result of defendants' conduct, plaintiff has
9 suffered and continues to suffer humiliation, emotional distress, and mental
10 anguish, all to her damage in a sum according to proof.

11 29. As a further direct and proximate result of the conduct of
12 defendants, plaintiff has incurred and will incur economic detriment
13 including but not limited to lost interest and/or interest incurred on moneys
14 borrowed and other special damages in an amount not yet determined.

15 30. Plaintiff has incurred and continues to incur legal expenses and
16 attorneys' fees. Plaintiff is presently unaware of the precise amount of such
17 expenses and fees, and prays leave of court to amend this complaint when
18 those amounts are more fully known.

19 31. Defendants committed the acts alleged herein maliciously,
20 fraudulently, and oppressively, with the wrongful intention of injuring
21 plaintiff, and acted with an improper and evil motive amounting to malice
22 and in conscious disregard of plaintiff's rights. Because the acts taken
23 towards plaintiff were carried out by defendants acting in a despicable,
24 deliberate, cold, callous, and intentional manner in order to injure and
25 damage plaintiff, she is entitled to recover punitive damages in an amount
26 according to proof.

1 WHEREFORE, PLAINTIFF prays judgment against defendants, and
2 each of them, as follows:

3 1. For general damages for emotional distress, humiliation, and
4 mental anguish according to proof.

5 2. For lost interest and/or interest incurred on moneys borrowed,
6 increased litigation expenses, increased personal expenses, increased
7 attorneys fees, other financial losses according to proof;

8 3. For exemplary (punitive) damages according to proof;

9 4. For reasonable attorneys' fees and costs and expenses of
10 litigation;

11 5. For prejudgment interest; and,

12 6. For such other and further relief as the court may deem just and
13 proper.

14 DATED: January 24, 2007

LAW OFFICES OF STEPHEN M. MURPHY

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16 BY: 
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STEPHEN M. MURPHY
Attorneys for Plaintiff